

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 96-0555 GIT**  
**Gross Income Tax**  
**For The Period Ending: December 31, 1995**

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**ISSUES**

**I. Gross Income Tax - Penalty**

**Authority:** IC 6-2.5-3-2; 6-2.5-5-3; 45 IAC 2.2-5-8

The taxpayer protests the ten percent (10 %) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is an Indiana corporation involved in a large agricultural operation.

**I. Gross Income Tax - Penalty**

**DISCUSSION**

The taxpayer protests the imposition of a penalty imposed by IC 6-8.1-10-2.1 (b) for the underpayment of estimated tax. The controversy stems from an advance deposit made by the taxpayer for income tax paid on the sale of real estate. Form IT-2220 directed the taxpayer to report the payment as a tax reduction credit on line 6. However, the taxpayer believe it could insert the amount paid to the Department as an estimated tax payment on line 12.

The taxpayer claims that it made sufficient advance deposits of Gross Income Tax to satisfy the safe harbor provision set out in IC 6-3-4-4.1(e). However, the Department did not recognize this advance deposit made by the taxpayer on the basis that "[g]ross income tax paid on the sale of real estate cannot be claimed as estimated tax credit on line 12 of the IT-2220." The Department then imposed a penalty upon the final tax liability for the taxable year.

The estimated tax penalty is the same penalty prescribed by IC 6-8.1-10-2.1. *See* IC 6-3-4-4.1(e). The negligence penalty imposed under I.C. 6-8.1-10-2.1 may be waived by the Department where

reasonable cause for the deficiency has been shown by the taxpayer.:

The department shall waive the negligence penalty imposed under I.C. 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

The taxpayer paid a substantial amount of income tax to the Department at the time of the real estate transaction. The taxpayer also made quarterly estimated payments to the Department. It was reasonable for the taxpayer to believe that its tax payments had met the minimum amount necessary to avoid the estimated tax penalty.

### **FINDING**

The taxpayer's protest is sustained. The negligence penalty will be waived.